

IN THE HIGH COURT OF HIMACHAL PRADESH
SHIMLA:

CWP.No.1253/2006.

Date of Decision :19.3.2007..

Kullu Transport Company.

...Petitioner.

Versus:

State of H.P. and others.

...Respondents.

Coram:

The Hon'ble Mr.Justice Deepak Gupta, Judge.

The Hon'ble Mr.Justice Sanjay Karol, Judge

Whether approved for reporting?¹

For the petitioner: Mr.Rajiv Sharma,Sr.Advocate
with Mr.Suneet Goel, Advocate.

For Respondents. Mr.M.S.Chandel, Advocate
General With Mr.J.S.Guleria,
Law Officer.

Sanjay Karol, J (Oral).

By means of this writ petition, the petitioner has assailed the demand notice dated 25.9.2006 issued by the Regional Transport Authority, Kullu whereby amount and penalty imposed has been demanded. Further there is a prayer for quashing of the preceding notices, memos and communications and demands. The petitioner has also

¹ Whether reporters of Local Papers may be allowed to see the judgment?

assailed the validity of the H.P. Motor Vehicles Taxation Act, 1972.

It is the case of the petitioner that they are engaged in the business of public transport and own a fleet of buses. They have been prompt in depositing the dues/demands raised by the Transport authorities from time to time. Based on the Audit note for the year 2002, 2003 vide letter dated 6th December, 2003, Secretary Regional Transport Authority, Kullu, H.P. raised a demand of Rs.21,11,290/- upon the petitioner. The same was towards the loss of revenue due to irregular rebate availed by the petitioner on Special Road Tax. The said demand notice was promptly replied by the petitioner on 10th December, 2003 explaining in detail the reasons as to why the petitioner was entitled for exemption/rebate from January 2000 to August 2003 and also seeking not only withdrawal of the said demand notice but also refund of Rs. 33,947/- as an excess amount deposited by them. The position was further clarified in terms of its another letter dated 18th May, 2004. Suddenly after a lapse of 2 ½ years, the petitioner was again served with notice dated 18th August, 2006 issued by the Regional Transport Authority, Kullu, H.P. This was promptly replied by the petitioner in terms of its letter dated 6th September, 2006. It seems that the matter did not rest there and vide another demand notice dated 25th September, 2006, petitioner was asked to not only deposit Rs.21,11,290/- but also pay the penalty amounting to Rs.15,83,467/-. All the

aforesaid letters are on record. Under these circumstances letters dated 6th December, 2003 and 25th September, 2006 have been assailed by the petitioner essentially on the ground that the petitioner had been promptly paying the dues in accordance with law and no amount is due and payable and that in any event no prior notice was ever issued or served upon the petitioner raising alleged demand and penalty. The vires of the H.P. Motor Vehicles Taxation Act has been assailed on various grounds.

The reply filed by the respondents seeks to justify the validity of the Act under challenge. Preliminary objection with regard to an alternate remedy of appeal before the Appellate Authority has also been taken. The demand notice with penalty amount has also been justified. The fact that the demand notice for recovery of penalty has been initiated on the audit objection is not disputed.

The fact that no show cause notice was issued before raising the alleged demand and imposition of penalty is not disputed. It is also not disputed that the petitioner was not given any opportunity of hearing to submit his case. That no action was taken between the date of the 1st demand notice and 2nd demand notice is also not in issue. During the course of the hearing, the learned Advocate General fairly stated that an opportunity was required to be given to the petitioner before imposition of any demand or penalty. Since the order of the authority is against the basic principles of natural justice and Audi alterum paltrum, therefore, in the

facts and circumstances, without going into any other rival contentions raised by the parties, we set aside the demand notice dated 25th September, 2006 (Annexure:P-7). We direct the petitioner to appear before the Regional Transport Authority, Kullu, H.P. on 27th April, 2007 at 11.00 A.M. The respondents are directed to supply the material and the reasons for effecting the recovery under challenge. The Regional Transport Authority shall decide the matter not later than four months positively. The matter pertains for the years 1997 up to 2002 and it must attain finality at the earliest.

It is made clear that we have not expressed any opinion on the merits of the case and it will be open for the parties to take all such pleas as may be available to them. We may only point out that this order is being passed in the peculiar facts and circumstances of the case and we have not decided the issue with regard to the exhaustion of the alternative remedy by the petitioner. The writ petition is accordingly disposed of in the aforesaid terms.

**(Deepak Gupta),
Judge.**

**(Sanjay Karol),
Judge.**

March 19, 2007(R)